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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,543	06/10/2005	Loren Lantz	M-1107	3681

54964 7590 05/17/2007
TYCO HEALTHCARE - EDWARD S. JARMOLOWICZ,
15 HAMPSHIRE STREET
MANSFIELD, MA 02048

EXAMINER

TOWA, RENE T

ART UNIT	PAPER NUMBER
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3736

MAIL DATE	DELIVERY MODE
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05/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/538,543

Applicant(s)

LANTZ ET AL.

Examiner

Rene Towa

Art Unit

3736

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE


8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: Applicant's newly submitted claims include limitations such as "and the mounted cover conceals the at least one eject finger and probe" at lines 12-13 of claim 1, which were not considered in a prior office action and therefore raise new issues that would require further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument that Sato could not be used in the manner proposed by the Examiner in order to dislodge the probe cover has been considered but has not been deemed persuasive. The Examiner notes that, in regard to the rejection over the Sato reference alone, when one pushes down on end cap 25 while the probe shaft is immobilized, the collar 13 is prompted to move in a direction opposite from the biasing force of the retaining means 19; for example, the retaining means are biased such that they allow easy access to the probe cover in one direction but prevent movement in the opposite direction thereof (see figs. 5-6 and appropriate section). As such, pushing down on the end cap 25, causes movement of the collar 13 in the unbiased direction; wherein the leading end 13a of the collar 13c is fully capable of striking the shoulder 12d of the probe cover and thereby dislodge the probe cover from the probe. Moreover, in re Gazda, the prior art disclosed a clock fixed to the stationary steering wheel column of an automobile while the gear for winding the clock moves with the steering wheel; the court held that mere reversal of such movement, so that the clock moves with the wheel, was held to be an obvious expedient (see MPEP, section 2144.04 (VI) (A)); applying the same rationale, it is obvious that reversing movement of the collar 13 from stationary in Sato to movable, as claimed, and that of the shaft from movable in Sato to stationary, as claimed, is an "obvious expedient." Even moreover, in regard to the Applicant's argument against Sato in view of Makita, the Examiner notes that such arguments are moot since they are dependent upon entry of the newly amendment claims, which claims will not be entered as explained above. In view of the foregoing, the Applicant's request for reconsideration has been considered but fails to place the case in condition for allowance.


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